

**E-Mail Request for Emergency Relief**

1. Case Number: 04-cv-1507-SLR

2. Check the box that applies:

- ☐ Requesting a teleconference with the parties and the court  
☐ Requesting an in-person conference with the parties and the court  
☒ Requesting either of the above listed options at the court's determination

3. BRIEFLY describe the reason for this **emergency** request:

Tomorrow, Markman and opening summary judgment briefs are due. Although fact discovery closed 5 months ago, defendant Bath & Body Works ("BBW") today produced for the first time certain documents that are relevant to the issues to be briefed tomorrow. Specifically, the asserted patent claims compositions containing orange oil and other components. BBW's products contain 6 raw materials with orange oil in them that were not produced during discovery. As a result, LP Matthews' expert was forced to make assumptions about the orange oil content of these raw materials. The documents produced by BBW today reveal for the first time the orange oil content of 3 of the 6 raw materials. Because of this 11th hour revelation, LP Matthews respectfully requests a one-week extension of the claim construction and summary judgment briefing schedule to permit it to review and digest BBW's last-minute document production before filing its claim construction brief and summary judgment motions. The request will not affect any other dates.

\*Any text added beyond the limits of this space will be disregarded by the court.

4. Name of opposing counsel contacted about this request: John Ward; David Moore

5. Response of opposing counsel to this request:

BBW does not oppose LP Matthews' request. The Kao defendants oppose the request, stating "we do not think it is proper to impose a new schedule upon the Court at this late date" and "Kao will be filing its papers on the schedule currently in place."

6. Name of local counsel making this request: John G. Day

7. Today's Date: June 28, 2006

\*\*\*\*\*  
For court use only:

- ☐ A teleconference will be held on \_\_\_\_\_ to be coordinated and initiated by \_\_\_\_\_  
☐ An in-person discovery conference will be held on: \_\_\_\_\_  
☒ Other: Claim construction briefing due today. Summary judgment briefing due July 6, 2006.

**Opposing Counsel's Response to E-Mail Request for Emergency Relief**

1. Case Number: 04-cv-1507-SLR
2. BRIEFLY state your response to the **emergency** request made by opposing counsel:

This is a dispute between BBW and LPM and does not involve Kao. Nonetheless, it is Kao's understanding that the recently produced documents (1) are not BBW documents but are third party documents (BBW's suppliers), (2) have no effect on claim construction and (3) were the subject of subpoenas served by LPM upon BBW's suppliers many months ago. Kao does not believe that this is a sufficient justification to impose a new schedule on the Court at this late date. At minimum, there is no need to delay any party's claim construction briefing. Kao stands ready and will file its briefs regardless of whether the Court believes an extension is appropriate for any of the briefing requested by LPM.

\*Any text added to beyond the limits of this space will be disregarded by the court.

3. Name of local counsel submitting this response: Richard L. Horwitz

4. Today's Date: June 29, 2006

\*\*\*\*\*